

LGBTI Enlargement Review 2017

ILGA-Europe, in cooperation with ERA – LGBTI Equal Rights Association for Western Balkans and Turkey (Regional); Aleanca and ProLGBT (Albania); Sarajevo Open Centre (Bosnia and Herzegovina); Center for Social Group Development CSGD and Center for Equality and Liberty CEL (Kosovo); Coalition “Sexual and Health Rights of Marginalized Communities” CSHRMC (FYR Macedonia); Juventas, Queer Montenegro, LGBT Forum Progress and LGBTIQ Social Center (Montenegro); Labris, Gayten LGBT, Da Se Zna, XY Spectrum (Serbia); and Kaos GL (Turkey).

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1. Introduction

Rationale

This report reflects developments in LGBTI people's rights in each accession country since October 2016, in particular in reference to recommendations identified by the European Commission in last year's Enlargement Reports, as well as highlighting the key priorities that LGBTI organisations have identified for the coming year. As human rights more broadly, and the human rights of LGBTI people more specifically, continue to hold an ever stronger position among the Copenhagen Criteria accession countries are required to meet prior to becoming eligible for admission into the EU, this report is intended to assist the European Commission in assessing the progress made in each country to date, and providing clear guidance on reforms or measures that still need to be taken. In turn, the Enlargement Reports issued by the European Commission are a key tool used by LGBTI organisations in the region to engage with their governments and hold them accountable for the commitments made.

Global Context

The last year brought an on-going stream of shocking news in an apparent regression of the human rights of LGBTI people across Europe. News of on-going illegal mass detentions and torture of gay men in Chechnya; of state sanctioned arrests of perceived gay men and trans women, their forcible medical examinations in alleged clampdown on prostitution in Azerbaijan; of increasing hate crimes carried out with impunity in Georgia; police raids of LGBTI-friendly night clubs in Belarus; indiscriminate bans on LGBTI events in Ankara, not to mention news from beyond Europe, in Egypt, Tunisia and elsewhere have shaken the human rights world. In such an environment, the situation LGBTI people are faced with in the Balkans may seem relatively good. After all, ILGA-Europe's own Rainbow Map shows that the majority of countries in the Western Balkans (with the exception of Macedonia and Turkey) are far ahead of several countries that are already members of the EU in terms of legal and policy protections of LGBTI people.

However, especially in light of the regressive tendencies that can be observed elsewhere, it is important to address the human rights of LGBTI people in the Balkans. Much progress has been made there in recent years when it comes to the promotion and protection of LGBTI rights. It is imperative to ensure that these achievements are real and sustainable, and that they do not become subject to regression. The European Commission has leverage and can have a real impact in the region. EU accession remains a key goal for the majority of the accession countries, and therefore the accession process provides an unparalleled opportunity for real, sustainable change. The country submissions included in this report outline what changes are needed to ensure full and genuine protection of the human rights of LGBTI people.

Local Context

In the majority of the accession countries, the legal frameworks and existing policies for the promotion and protection of the human rights of LGBTI people are strong. However, implementation and proactive tackling of pervasive negative public attitudes remains a key issue. A strong example of this is the first Pride march in Kosovo earlier this year. On the one hand, LGBTI people in Kosovo enjoy many legal protections, including in the constitution, the Pride march was well protected by the police, and even attended by the President of the country, yet, at the same time, the occasion was accompanied by rampant hate speech online as well as two violent attacks on human rights defenders after the end of the march, with neither being classified as a hate crime.

Issues such as hate crime cases not being classified as such or investigated effectively, unimplemented national action plans, discriminatory educational materials, and hate speech,

continue to be an issue across the region, despite strong legislation to the contrary. Furthermore, gaps remain in legal protection, with lacking legal recognition of same-sex partnership and gender recognition procedures across the region. These priorities are crucial to the realisation of the human rights of LGBTI persons, and are part of the international human rights treaties accession countries are party to. As such, they are relevant to bring up in the context of the enlargement package and so you will see them outlined throughout the country reports.

This year, we feel the need to especially highlight the worrying developments in Turkey and the consequences they have for the LGBTI community and civil society. Hundreds of academics, human rights defenders and journalists have been arrested in the country; hundreds of NGOs have been shut down, while the President's powers have been extended. A blanket ban on LGBTI events has been issued in Ankara, Pride marches violently attacked by police forces in Istanbul. In light of these developments, we have not included recommendations akin to those included for other accession countries for the coming year, but urge instead that the rapidly deteriorating situation in Turkey, including for LGBTI people, informs and influences the EU's interactions and dealings with the country, and that relevant institutions, including the European Commission, are more outspoken in condemning the regressive tendencies of democratic processes and human rights, and explicit about the harmful impact the situation has on minority rights, especially LGBTI rights.

Another stand out country, albeit in a positive sense, is FYR Macedonia, which after years of political stagnation, and many months of violent political crisis following parliamentary elections almost a year ago, has entered a period of positive energy and drive for change. The current period presents a unique opportunity to ensure that Macedonia now makes advances regarding the protections of the rights of LGBTI persons. In the few months since stabilisation of the political situation, Pride celebrations were opened by the Minister of Culture, a group of parliamentarians are en route to establishing an LGBTI Intergroup in the parliament, and even the Prime Minister has expressed public support for the rights of LGBTI people – a stark contrast to this time last year. But the situation remains fragile and the European Commission can play a crucial role in supporting these positive tendencies and ensuring they turn into real change.

Headings for country submissions

Each country submission is arranged under the following headings. In cases where no relevant updates have taken place, the respective heading has been left out:

- Summary of key developments, including political context and trends
- Main action points for the coming year
- Bias motivated violence, hate speech, hate crimes
- Freedom of assembly, association and expression
- Equality and non-discrimination, including legislation and enforcement
- Legal recognition for same sex couples
- Rights and equal treatment of trans and intersex persons
- Public awareness and attitudes
- A supportive and enabling environment for civil society

Conclusion

While we can talk in broad strokes about the main issues and key priorities in the region, it is important to remember that there are also key differences across borders. Local contexts play a strong part in the everyday realities of LGBTI people across the accession countries. These differences are reflected in the reports to come submitted by organisations working on the ground.

We hope that the information here enclosed will be useful in the process of compiling the Enlargement Package 2017 and look forward to seeing the outcomes.

For any further questions or concerns about the information in this report, please don't hesitate to get in touch.

Sincerely,

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2. Main priorities in the coming year

For each of the countries, local LGBTI organisations have identified key priorities for reform in the area of human rights of LGBTI persons. If these priorities are reflected in the country reports 2017, the organisations and the European Commission can deliver a unified message to the governments of accession countries and monitor the progress made on these issues in the coming year.

2.1. Albania

- Urgent clarification of what will happen with the implementation of the action plan for LGBTI People in Albania 2016-2020 now that the Ministry of Social Welfare and Youth no longer exists.
- Adoption of legal gender recognition legislation.
- Introduction of amendments to the Family Code to introduce the concept of cohabitation of same-sex couples.

2.2. Bosnia and Herzegovina

- Adoption and implementation of an Action Plan for Equality of LGBTI Persons
- Passing of amends to the criminal codes of all three administrative units in reference to hate speech to include grounds of sexual orientation, gender identity and sex characteristics
- Adoption and implementation of laws in all three administrative units that would enable legal recognition of same-sex unions and regulate their mutual rights and duties
- Adoption and implementation of laws that would explicitly regulate and simplify legal gender recognition procedures without the requirement for full medical reassignment
- Prohibition of medically unnecessary surgical procedures and sex normalisation treatments in health institutions performed on intersex persons without their full and informed consent

2.3. Kosovo

- Proper implementation and investigation by the police and the prosecutor's office of hate crimes against LGBTI people
- Completion of amendments to the Criminal Code to include grounds of sexual orientation, gender identity and sex characteristics as aggravating circumstances relating to hate crime, hate speech, murder, damage to property and incitement to hatred
- Development of a fair, transparent legal framework for legal gender recognition, based on a process of self-determination, free from abusive requirements
- Implementation of the LGBTI National Action Plan, the National Strategy against Domestic Violence (which includes an LGBTI component) and the Action Plan of the Human Rights Parliamentary Committee

2.4. FYR Macedonia

- Adoption of new legislation on protection from discrimination including explicit grounds of SOGI
- Passing of amendments to criminal code to define hate crime and hate speech (currently undefined), and to include grounds of SOGI as aggravating circumstances (currently in theory covered under "other grounds", but in practice the law is not applied even in circumstances of racially or ethnically based crimes), accompanied by relevant training for authorities
- Drafting and adoption of National Action Plan to promote and protect the human rights of LGBTI people
- Introduction of systematic regulation of legal gender recognition procedures
- Adoption of the Istanbul Convention

2.5. Montenegro

- Continued efforts for full and genuine implementation of existing legislative framework that protects the human rights of LGBTI people, with particular focus on implementation outside of the capital city
- Proactive efforts to tackle negative public attitudes of LGBTI people
- Including express mentions of all SOGISC grounds in policies designed to tackle hate speech
- Adopting legal measures to recognise and protect same-sex couples, such as civil unions or registered partnership
- Strategic monitoring and evaluation of the Strategy for the improvement of LGBT people's quality of life and the corresponding action plans

2.6. Serbia

- Adoption of a law on same-sex partnerships
- Adoption of a law on legal gender recognition
- Implementation the National Antidiscrimination Strategy
- Proactive work on prevention and protection from bullying based on sexual orientation and/or gender identity in high schools
- Proactive efforts to ensure proper and effective implementation of existing legislative frameworks, both in the capital and beyond.

2.7. Turkey

Due to the continuously worsening situation in Turkey, this year's report will not suggest any legal or policy recommendations for the Turkish government to consider. Instead we ask that the European Commission:

- Consider what mechanisms are in place to support human rights defenders, especially LGBTI activists, to ensure they can keep up their crucial work in supporting their communities in an increasingly more challenging context
- Ensure full and effective implementation of the EU's LGBTI guidelines and to work with EU delegations and Member State embassies based in Turkey to ensure effective support to those fighting the increasing authoritarianism and its effects on a day to day basis
- Ensure that the rapidly deteriorating situation in Turkey, including for LGBTI people, informs and influences the EU's interactions and dealings with the country, and that relevant institutions, including the European Commission, are more outspoken in condemning the regressive tendencies in democratic processes and human rights, and their harmful impact on minority rights, especially LGBTI rights

3. Country submissions

3.1. ALBANIA

Submitted by: ALEANCA LGBT & PRO LGBT

Summary of key developments, including political context and trends

- Overall the legal situation framework in Albania includes general guarantees of respect for human rights, but implementation is lacking, and further improvements are needed.
- Elections were held in Albania in June 2017. Ahead of the elections NGOs Aleanca and PRO LGBT ran a political campaign designed to inform LGBTI voters on the candidates and prevent the most homophobic candidates from being elected to parliament. An important part of the campaign was the encouragement given to the community to raise its voice as part of the electorate, equipped with transparent information. Publications during the campaign, gained significant media coverage with over 60 online and mainstream media articles and chronicles (in a period of two months). The work with media served to raise awareness among the general public and also political actors. The campaign was successful in preventing the strongest proponents against the promotion and protection of the rights of LGBT people from entering parliament.
- The implementation of the National Action Plan for LGBTI People in Albania 2016-2020 was initiated and led by the Ministry of Social Welfare and Youth (MSWY) in cooperation with civil society organizations. However, after the June 2017 elections, the MSWY has been abolished and its mandate split between other ministries. No further explanations have been given on what will happen in the coming years with the National Action Plan.
- The LGBTI community was hit when the NGO Aleanca community center caught fire, closing the community center for a period of around three months.

In 2018 authorities in Albania should:

- *Urgently identifying what will happen with the implementation of the action plan for LGBTI People in Albania 2016-2020 now that the Ministry of Social Welfare and Youth no longer exists.*
- *Pass legal gender recognition legislation.*
- *Introduce amendments to the Family Code to introduce the concept of cohabitation of same-sex couples.*

Bias motivated violence, hate speech, hate crimes

- Hate speech and discriminatory language continues to be a problem in media coverage, especially in online media. There is no regulation on comments and opinions which spread hate and advocate violence towards LGBT people.
- According to a media monitoring concluded by ProLGBT and Historia Ime staff during November-December 2016, 11% of four online media's articles monitored, included hate speech and discriminatory language because of sexual orientation and gender identity.

In 2018 Albanian authorities should take steps to ensure the full and proper implementation of hate crime and hate speech legislation.

Freedom of assembly, association and expression

- The 6th Tirana Gay (P)Ride took place this year. Over 200 LGBTI community members, civil society activists from Albania and the region as well as supporters of the cause participated.

This year's message was "The Time of Promises is Over" by which activists demanded that concrete actions against discrimination of the LGBTI community in Albania should be taken. Activists were asked to move the event due to undisclosed threats, which they did not do. The event took place without any incident.

Albanian authorities should continue to ensure the right to freedom of expression and assembly and ensure full and proper implementation of existing legislation in Tirana and beyond.

Equality and non-discrimination, including legislation and enforcement

- Anti-discrimination legislation is in place and it prohibits discrimination because of sexual orientation and gender identity.

Albanian authorities should take steps to ensure full implementation of existing legislation.

Recognized unions for same sex couples

- Amendments to the Family Code to introduce the concept of cohabitation of same-sex couples have not yet been adopted. No further changes since the last reporting period.

Albanian authorities should introduce amendments to the Family Code to introduce the concept of cohabitation of same-sex couples.

Rights and equal treatment of trans persons

- Albania has no Gender Recognition Law. Even though the law has been drafted since 2013, it hasn't been approved yet.

Albanian authorities should revisit the draft law on legal gender recognition to ensure the protection of trans persons.

Public awareness and attitudes

- Public awareness and social acceptance remain low, particularly in rural areas.
- The level of prejudice against LGBTI people, especially trans people, from doctors and other professionals, is still relatively high and needs to be addressed.
- Further political commitment is needed in order to promote respect and equality in the society for LGBTI community.
- The first openly lesbian couple were featured on the local version of Big Brother reality TV show, which was an important step for visibility of LGBTI people, but led to an increase in hate speech.

Albanian authorities should take proactive steps to tackle pervasive negative public attitudes of LGBTI people.

3.2. BOSNIA AND HERZEGOVINA

Submitted by: Sarajevo Open Centre (SOC)

Summary of key developments, including political context and trends

The years 2016 and 2017 brought about significant concern in the increase of domestic violence and peer violence motivated by sexual orientation or gender identity, and a growing number of public homophobic and transphobic statements in academic institutions. It is clear that, in addition to amendments to laws and public policies, it is necessary for the institutions in BiH to develop specific programmes and measures of action to combat intolerance, homophobia, transphobia, violence, and discrimination and to encourage social inclusion of LGBTI people.

The improvement of the legal framework in BiH in 2016 – the amendments to the Anti-Discrimination Law and introduction of sex characteristics as a protected ground, as well as the amendments to the Criminal Code of FBiH and regulation of hate crime – are commendable but should be accompanied by mandatory training of civil servants, the judiciary and the police. LGBTI human rights specific measures have been included in the Gender Action Plan implementation operational plans of entity governments and the Council of Ministers of BiH, such actions with regard to LGBTI human rights must continue and become more comprehensive.

In the end of 2016, a Special Report on LGBTI Rights in Bosnia and Herzegovina was produced by the Ombudsman. This is the first official report of this kind produced by a BiH institution.

At the end of 2016 and beginning of 2017, the Gender Equality Agency started working on the establishment of a working group for the development of an Action Plan for Equality of LGBTI. The working group has already met and the Action Plan should be ready for adoption by the end of 2017.

In 2018 BiH government and entities should:

- *Adopt and implement an Action Plan for Equality of LGBTI Persons*
- *Amend the criminal codes of all three administrative units in reference to hate speech to include grounds of sexual orientation, gender identity and sex characteristics.*
- *Adopt and implement laws in all three administrative units that would enable legal recognition of same-sex unions and regulate their mutual rights and duties.*
- *Adopt and implement laws that would explicitly regulate and simplify legal gender recognition procedures without the requirement for full medical reassignment.*
- *Prohibit medically unnecessary surgical procedures and sex normalisation treatments in health institutions performed on intersex persons without their full and informed consent.*

Bias motivated violence, hate speech, hate crimes

In 2016 the Federation of BiH joined its fellow administrative units (Republika Srpska and Brčko District) in regulating hate crime. Gender, sexual orientation and gender identity were included among the amendment's protected grounds, ensuring hate crime legislation in all three units across the country. Legislation on hate speech towards LGBTI people, however, is lacking.

From January to September 2017, SOC documented 42 cases of hate speech and incitement to hatred and violence, and 23 cases of criminal offences and incidents motivated by prejudice on the ground of sexual orientation and/or gender identity. Of the 23, 8 were cases of domestic violence, with the perpetrators being immediate family members of the victim. Homophobic and transphobic peer violence is also a continuous problem, documented in 4 cases in 2017. Although relevant institutions did take action to address some of the specific cases, a concrete institutional plan to

combat peer violence and develop an inclusive and tolerant educational environment for LGBTI youth is lacking.

Homophobia and transphobia in educational institutions remain a problem. The Senate of the University of Sarajevo condemned the homophobic and transphobic speech of the former President of the Student Parliament from March of 2016 a year after it happened. In April 2017, a book *Unease with the Media*, which promotes xenophobia, homophobia and transphobia, by a faculty professor Fahira Fejzić-Čengiđ, was promoted at the University of Sarajevo. The university did not respond to SOC's calls to condemn hateful content.

BiH and its entities should:

- *Amend criminal codes of both entities and Brčko District to introduce grounds of sexual orientation and gender identity in hate speech regulation.*
- *Organize institutional trainings on combating homophobia and prejudice, as well as discrimination of LGBT people.*
- *Develop a programme to combat peer violence in primary and secondary schools which will encompass homophobic and transphobic violence.*
- *Organize trainings for university teachers and staff to make them more sensitive in working with LGBTI persons.*

Freedom of assembly, association and expression.

Large and visible LGBTI events take place in BiH on a regular basis. The annual Merlinka Queer Film Festival took place in 2016 and 2017 with adequate support and protection from the police. The festival was also organised in Tuzla, which, however, did not receive police support despite timely notification. Other events have also been successfully organised with support of the police.

In spring 2017 SOC contacted the Ministry of Interior and Ministry of Traffic of Sarajevo Canton to announce a protest march and request permits for 13 May to mark the International Day against Homophobia, Biphobia and Transphobia. Although all timelines were complied with by SOC, the Ministry only delivered the permit at 16:08h on 11 May 2017, by which time it was too late to continue with the organization of the march and meet the legal requirements, i.e. to inform the public of street closures no later than 48 hours prior. Failure to abide by this provision rendered the permit inconsequential and prevented the organization of the march. The permit came 5 hours after members of SOC held a press conference to announce the cancellation of the march, characterising the administrative silence of the Ministry of Traffic as violation of the freedom to assembly.

BiH and its entities should ensure genuine access to and protection of the freedom of expression and assembly in the capital and throughout the country.

Equality and non-discrimination, including legislation and enforcement

By adopting the amendments to its Anti-Discrimination Law in 2016, Bosnia and Herzegovina got an improved legal framework for protection from discrimination. Through these amendments, sexual orientation and gender identity have finally been accurately formulated as prohibited grounds for discrimination. In addition, "sex characteristics" have been introduced as a prohibited ground.

SOC documented 4 cases of discrimination in 2016 and 7 cases by September of 2017. 3 cases referred to discrimination of LGBTI persons in the service sector, prohibition to enter or discriminatory rules in bars. Of the other documented cases, 1 referred to discrimination in the workplace, 2 to discriminatory contents in textbooks used in higher education and 1 to public incitement to discrimination of LGBTI persons.

In September 2016, the BiH Institution of Human Rights Ombudsman published a Special Report on the State of LGBT Rights in Bosnia and Herzegovina. This outlined key issues, such as the fact that there have been no cases of discrimination on the grounds of sexual orientation that ended up in court. The report also included recommendations which the European Commission should also call BiH to act upon:

- *Holding trainings for police, judiciary and penitentiary staff on LGBTI topics and application of relevant legislation*
- *Political parties to introduce into their programmes the topics of protection from discrimination on the grounds of sexual orientation or gender identity.*
- *Clinical centres and hospitals in BiH were recommended to systemically and continuously train their medical staff on trans issues.*
- *to amend certain laws to regulate same-sex partnerships and to simplify and facilitate the legal change of sex marker and personal documents.*

Recognised unions for same sex couples

In the report in 2016 the European Commission recognised that same sex couples are continuously institutionally discriminated against because there is no legal framework that provides them any social and economic rights. The case remains the same currently. In 2016, 8 couples contacted Sarajevo Open Centre looking for information on registering their partnerships in the countries of the region and in the European Union. By September of 2017, two couples contacted Sarajevo Open Centre in search for such information.

BiH should adopt and implement laws in all three administrative units that would enable legal recognition of same-sex unions and regulate their mutual rights and duties.

Rights and equal treatment of trans and intersex persons

The most recent European Commission Progress Report for Bosnia and Herzegovina recognizes the fact that transgender persons remain marginalized and that nothing has been done to simplify the sex marker change procedure. ECRI, in its third report on Bosnia and Herzegovina, also recommends that the authorities should regulate the procedure and the conditions for sex change in accordance with Council of Europe guidelines.

Trans* people in BiH are discriminated against in all areas of life on the basis of their gender identity and gender expression, and they are faced with a legal vacuum in terms of legal regulation of sex change. Trans* people can only change the sex marker in their official documents after they have completed medical transition. The psychological evaluation, the endocrine therapy and the surgical procedures have to be undergone abroad, because they cannot be performed in BiH, and the cost is not covered by the state-funded health insurance.

By introducing sex characteristics as a ground for discrimination through the Amendments to the Anti-Discrimination Law in BiH, the legislator recognised and safeguarded intersex persons. Bosnia and Herzegovina joined a small number of countries in Europe, which explicitly protected intersex persons in their anti-discrimination legislation. However, intersex persons are almost invisible and excluded in society. Reference literature uses outdated, derogatory terminology to denote intersex persons and there is significant concern that the so-called sex normalisation surgeries are performed in public health institutions.

BiH and its entities should:

- *Develop cooperation with medical institutions and experts, sharing information and raising sensitivity regarding the problems of intersex persons.*
- *Involve public authorities (ministries of health) and public bodies competent for the protection of human rights (ombudsmen) in the protection of intersex persons.*

Public awareness and attitudes

The latest research on public attitudes towards LGBT persons in the Western Balkans was conducted in 2015 by the National Democratic Institute, the U.S. Agency for International Development, the Gay and Lesbian Victory Institute and Civil Rights Defenders. In Bosnia and Herzegovina, 44% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. 52% said they would not vote for a political party that championed the rights of LGBTI people.

BiH should carry out activities designed at changing negative public attitudes of LGBTI people.

A supportive and enabling environment for civil society

A framework for cooperation between the governments and civil society has still not been established, in spite of constant pressure from civil society organisations. However individual Institutions in BiH have adopted a more open and partner approach to civil society organisations working on human rights of LGBTI persons, and civil society organisations, largely through broader coalitions, have been involved in key processes, such as amending the Criminal Code or drafting anti-discrimination legislation.

Although funds are dispersed to civil society organisations by the institutions of BiH and its entities there is a severe lack of transparency in this process, most of the institutions do not give fund to organisations working on LGBTI rights. So far only Tuzla Open Centre was funded by the City of Tuzla for the Merlinka Festival in 2017, in a small amount.

BiH and its entities should see civil society organisations as allies and ensure inclusion and collaboration with them.

3.3. KOSOVO

Submitted by: Center for Social Group Development CSGD and Center for Equality and Liberty CEL

Summary of key developments, including political context and trends

Despite some political turmoil in the reporting period, as a result of which public events marking the International Day Against Homophobia, Transphobia and Biphobia were cancelled, there has been some notable progress. Kosovo held its first Pride march with the participation of the President in October 2017. Research was conducted on trans people's access to health care and social protection, finding that while knowledge is lacking, attitudes are not necessarily pervasively negative. The second National LGBTI Action Plan was adopted by the Advisory and Coordination Group for the period December 2016-December 2018.¹

A key aspect that still requires development is hate crime and hate speech legislation. The President took the decision on December 2016 to make the necessary amendments of the Criminal Code of Kosovo, in January 2017 CSGD, supported by other human rights NGOs, drafted recommendations and submitted them to the Ministry of Justice. NGOs have been included in the working group taking this forward. The LGBTI community took a hit as one LGBTI organization was closed due to lack of funding. Consequently only 2 LGBTI organisations remain.

In 2018 authorities in Kosovo should:

- *Ensure that the police and the prosecutor's office properly investigate cases of hate crimes against LGBTI people.*
- *Complete amendments to the Criminal Code to include grounds of sexual orientation, gender identity and sex characteristics as aggravating circumstances relating to hate crime, hate speech, murder, damage to property and incitement to hatred.*
- *Develop a fair, transparent legal framework for legal gender recognition, based on a process of self-determination, free from abusive requirements*
- *Implement the LGBTI National Action Plan, the National Strategy against Domestic Violence (which includes an LGBTI component) and the Action Plan of the Human Rights Parliamentary Committee.*

Bias motivated violence, hate speech, hate crimes

- Although sexual orientation is specified as grounds for hate crime, in practice this law is not only unused, there is also a severe lack of engagement with LGBTI people and cases at all among the police. Since 2012, all of the cases reported to the police by LGBTI persons/activists have not been investigated.
- Hate speech legislation does not include grounds of sexual orientation, gender identity or sex characteristics, as such, incitement to hatred against LGBTI people goes unpunished. In the reporting period there were significant levels of hate speech in the public space, including in media, particularly by religious leaders and clerics in advance of and surrounding the first Pride march. LGBTI activists involved in organising the march received threats on line (these were reported to the police)
- After the first Pride Parade took place two cases of homophobic hate crime were reported to the police.
- In last year's report, the European Commission emphasised that cases of verbal and physical assault against LGBTI people should be properly investigated. This call remains relevant today.

¹<http://csgd-ks.org/wp-content/uploads/2017/03/Plani-i-punes-GKK-ZQM-ZKM.pdf>

In 2018 Kosovar authorities should take steps to ensure full and proper implementation of existing hate crime legislation, including effective investigation and classification of hate crimes against LGBTI people. Authorities should also complete amendments to the Criminal Code to ensure protection on grounds of SOGI against incitement to hatred.

Freedom of assembly, association and expression

- In May 2017 there was a motion of non-confidence in the government and a consequent dismissal of the parliament. In this context LGBTI NGOs decided to postpone what would have been the 4th March marking the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT).
- The first Kosovo Pride march was organised on October 10, 2017. Around 500 local and regional activists gathered in Prishtina. The march was attended by the president of Kosovo, Hashim Thaçi, and several international ambassadors. The police secured the event, and it passed without incident. Two cases of hate crime were reported to the police after the Pride march ended.

Equality and non-discrimination, including legislation and enforcement

- Amendments to the law for protection from discrimination were approved in June 2015. However, there has been no promotion of the rights and legal remedies foreseen in this law. Moreover, the government has not approved additional by-laws and action plans, which would enable effective implementation. Cases of discrimination of LGBTI people are being reported to LGBTI organisations, as many victims don't want to undertake legal remedies in relevant institutions. Consequently two LGBTI organisations have increased their capacities to offer legal counselling and be able to support victims in reporting cases to the Labour Inspectorate and to the Ombudsman. In the reporting period 5 cases have been reported (no response yet).
- 4 LGBTI victims have received shelter from CEL and been sent to Albania to be housed in the "Streha LGBT" shelter due to domestic violence based on their sexual orientation or gender identity.
- With the initiative of CSGD, on May 2017, the Ombudsperson Institution published the Amicus Curiae brief - an important legal tool which assists courts in Kosovo when dealing with discrimination towards LGBTI people.²

Authorities should ensure proper and effective implementation of existing legislation, including the adoption and implementation of necessary bi-laws.

Recognised unions for same sex couples

- There is no constitutional limitation on marriage, however the family law defines marriage between a man and a woman. The family law has not been challenged so far, and there has not been movement on civil partnership.

Rights and equal treatment of trans and intersex persons

- The Equal Rights for All research³, published in November, concluded that not all social workers had a clear understanding of the underlying issues for trans people, but overall they appeared to be open minded and showed a conviction in providing services for all those who

²http://csgd-ks.org/wp-content/uploads/2017/06/ANG-28.4.17_Homofobia_Amicus_Curiae_per_Gjykatën_Themelore_190780.pdf

³<http://equalrightsforallcoalition.com/en/publications/single-post/442/>

would be eligible. The report states that there are gaps to be filled which may improve the services that trans people receive.

- The report revealed that health professionals have a good understanding of the terminology, treatment and issues related to trans people, but their outlook is not always inclusive. A number of professionals did not recognise that they have a role to play in supporting trans people. There was a limited number of health professionals who actually had direct experience of dealing with trans patients.
- The law on civil status recognised the change of gender marker in ID documents, however an administrative order need to be enacted in order to ensure application and implementation of this law.
- Trans people's needs should be included in the Ministry of Health's strategy, and awareness-raising initiatives need to be conducted by civil society and public institutions alike.

Authorities should ensure full access to legal gender recognition procedures, and take steps to educate health professionals.

Public awareness and attitudes

- Based on data in the study conducted by NDI and IPSOS in 2015, public awareness and acceptance of the rights of LGBTI people remains low in Kosovo.

Authorities should take proactive steps to tackle pervasive negative attitudes towards LGBTI people.

A supportive and enabling environment for civil society

- Civil society has good cooperation with institutions behind closed doors. However, public support from state institutions has been visible only when foreign representatives are involved.

3.4. FYR MACEDONIA

Submitted by: Coalition Sexual and Health Rights of Marginalized Communities (CSHRMC)

Summary of key developments, including political context and trends

Parliamentary elections were held in Macedonia in December 2016. Following months of turmoil, violent protests and even attacks in the parliament itself, the political crisis was finally resolved in the spring of 2017 and a government formed by the Social Democrats in coalition with Albanian parties, marking a significant political change for the country which had been ruled by the conservative VMRO DPMNE for over a decade.

This change in the political landscape has already presented an opportunity for change for LGBTI people. For the first time the Skopje Pride Weekend in June was opened by the Minister of Culture. No government representative has been present at Pride events in the past. Furthermore, the 5th anniversary of the LGBTI Support Center on October 31st was attended by the Prime Minister of the Republic of Macedonia, Mr. Zoran Zaev, who addressed those present and publicly pledged support for the human rights of LGBTI people starting with the drafting of anti-discrimination legislation.

HERA, the Coalition SHRMC and Helsinki Committee of human rights identified seven allies among Members of Parliament across different parties who are set to establish an Intergroup for the promotion and protection of human rights of LGBTI people. A new draft of legislation for protection from discrimination, including explicit grounds of SOGI has been tabled and is set to be passed early next year, and the process for setting up a working group to work on legal gender recognition procedures has also been initiated.

However, the conservative party VMRO DPMNE retains its opposition to any respect and protection to LGBTI rights and has the potential to use its high number of MPs in the parliament as well as in key bodies, such as the Commission for Protection from Discrimination, to block any advances. The media, mostly internet based news portals controlled by VMRO DPMNE, are still using LGBTI rights for campaigning against the social-democrats, issuing articles with hate speech, spins and propaganda against LGBTI people.

In 2018 the new government should be urged to focus on:

- *Adoption of new legislation on protection from discrimination including explicit grounds of SOGI*
- *Amendments to criminal code to clearly define hate crime and hate speech (currently undefined) to include grounds of SOGI as aggravating circumstances (currently in theory covered under "other grounds", but in practice the law is not applied even in circumstances of racially or ethnically based crimes), accompanied by relevant training for authorities*
- *Drafting and adoption of National Action Plan to promote and protect the human rights of LGBTI people*
- *Introduction of systematic regulation of legal gender recognition procedures*
- *Adoption of the Istanbul Convention*

Bias motivated violence and hate crimes

Hate crime legislation in Macedonia does not explicitly include grounds of SOGI, and despite, in theory being covered under "other grounds", in practice this is not applied for cases including LGBTI people. Several historic hate crimes against LGBTI people remain unsolved. Namely, neither the masked attackers who in 2014 stoned the Damar café, while the LGBTI Support Centre celebrated its

second birthday, nor the perpetrators of hate crime actions from 2012, 2013 and 2014 (attacks on the LGBTI support Centre) have been identified.

In 2016, through the web platform “Report the Violence”, 4 cases of physical, verbal and family violence were reported, but none of the victims was motivated to report the cases to the respective authorities with the help of CSHRMC’s legal team.

Throughout 2016, CSHRMC documented 9 cases of violence (physical and verbal) against LGB people. 6 cases were reported the police, but in none was the hate crime motivation recognised and none are solved. In one case the police were the perpetrator. The other 3 cases are not reported to the police due to the victims’ fear of disclosing their sexual orientation or due to mistrust in the police’s will to resolve the case. Furthermore, 12 cases of violence against trans people were documented. One criminal investigation was opened and classified as a hate crime on the ground of the victim’s gender identity; the perpetrator was pronounced guilty in the first instance. In 2017, the Coalition documented 6 cases of hate crimes against trans people, mostly trans women.

The Ministry of Labour and social policy established a working group for the ratification of the Istanbul Convention and development of an action plan for implementation, both important steps towards a better protection from violence against LGBTIs, including domestic violence. The Coalition SHRMC is part of the working group.

There aren’t effective mechanisms for protection from hate speech in Macedonia, and hate speech on grounds of SOGI remain a strong issue both in the media and among politicians. The Agency for audio and audio-visual media services issued two media monitoring reports identifying instances of hate speech on grounds of SOGI. However, the Agency is not authorised to fine the media that use hate speech. One of the reports concerning Milenko Nedelkovski Show, was sent by the Agency to the Commission for Protection From Discrimination, but they refused to treat the report as an official complaint. The Coalition SHRMC and HERA send the report in an official form of complaint, but until now, the Commission have not issued an opinion despite the fact that the deadline of 90 days has passed.

In the course of 2016, CSHRMC initiated 5 investigations against media using discriminatory and hate speech on the ground of SOGI, 4 of which are submitted to the Council of Media Ethics, and one to the Commission for the Protection From Discrimination. In 2017 9 cases of homophobic hate speech were documented, including 2 cases including MPs. Procedures were initiated with the Council of Media ethics and Commission for Protection from Discrimination. Unlike the Commission, the Council recognized the hate speech in each of those cases and issued positive decisions, but as a self-regulatory body, its decisions are usually not respected by the media.

The criminal procedure against TV host Milenko Nedelkovski, started in 2014 is still pending in the public prosecution.

In 2017, the Coalition SHRMC started 5 complain procedures with the Ombudsperson and the Commission for Protection from Discrimination for homophobic content in books used in state universities. The Ombudsperson recognized the discrimination and advocated for changes. The Ministry of Education withdraw the relevant books and started a process of revision of schoolbooks and programs for elementary and secondary education. The University St Cyril and Methodius and the University St Kliment Ohridski agreed to include an anti-discriminatory clause⁴ in the manual for publishing schoolbooks, but the University St Kliment Ohridski refused to withdraw the existing textbooks. The State University Tetovo will withdraw the books with homophobic content. The

⁴ The anti-discriminatory clause does not include specific prohibition of discrimination on the ground of sexual orientation, gender identity and health status despite the fact that all the complaint procedures are started because of discriminatory content on those grounds.

Commission didn't respect the 90 days deadline for issuing opinion on the case, and in its opinion did not recognise discrimination in this case.

In 2018 Macedonian authorities should amend the criminal code to include a definition of hate crime and hate speech and include grounds of SOGI as aggravating circumstances, in addition to ensuring appropriate training for implementing bodies.

Freedom of assembly, association and expression

On 22 June, at the National Gallery, Skopje Pride Weekend 2017 was officially opened by the Macedonian Minister of Culture, Mr. Robert Alagjovovski. This was the first time that a minister attended Pride events. The weekend of cultural events, seminars and performances passed without incident and with record numbers of attendees from both Skopje and beyond. Next year activists plan to hold the first Skopje Pride March as part of the events.

On October 31st, the 5th anniversary of the LGBTI Support Center held at the Museum of Modern art, was attended by the Prime Minister, Zoran Zaev, who addressed those present and publicly committed to protecting and promoting the human rights of LGBTI persons.

In 2018 Macedonian authorities should ensure genuine freedom of assembly as activists plan to hold Macedonia's first Pride march.

Equality and non-discrimination, including legislation and enforcement

The Ministry of Labour and Social Policy have accelerated the process for drafting and adoption of the new/amended Law on prevention and protection of discrimination. The working group, including several NGOs, finished the drafting process and held a public debate ahead of embarking on the Governmental procedure. The new draft law includes sexual orientation and gender identity as a discriminatory ground. The provision in the section "exceptions from discrimination" that regulates the family, marriage and the wedlock as unions of opposite sexes was removed in the draft law. The new law should be adopted in 2018.

In the second half of 2016 the new National strategy for equality and non- discrimination was issued and, for the first time, mentioned sexual orientation and gender identity.

The Commission for Protection from Discrimination continued to be largely ineffective. Many members of the Commission are members of, or close to, the conservative party VMRO DPMNE, without any knowledge and experience in human rights or protection from discrimination.

In 2018 authorities should ensure adoption of new legislation on protection from discrimination including explicit grounds of SOGI.

Rights and equal treatment of trans and intersex persons

The most common issues trans people face are lack of relevant medical support, little or no knowledge of trans issues among healthcare professionals, and the lack of a clear legal framework for recognition of gender change. While in theory there is no prohibition on changing the gender marking and the personal ID number in the registries, in reality trans people face hurdles in changing the data and harmonizing the personal data in compliance with their gender identity. Of the 4 cases the Coalition SHRMC has worked on in the past year, two ended with a successful legal name change.

In 2017 the first surgery for gender reassignment (male to female) took place in Macedonia. The event received strong, and sensational media coverage

The Ministry of Labour and Social Policy have drafted and submitted information to the Government on the need to establish a working group that will draft legal gender recognition law. NGOs dealing with trans rights were consulted in the preparation of the information.

In 2018 authorities should focus on ensuring introduction of systematic regulation of legal gender recognition procedures

3.5. MONTENEGRO

Submitted by: LGBT FORUM PROGRESS, LGBTIQ SOCIAL CENTER, QUEER MONTENEGRO AND JUVENTAS

Summary of key developments, including political context and trends

Montenegro continues to be a leader in terms of the promotion of the rights of LGBTI people amongst its non-EU member neighbours (Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Serbia). Collaboration between civil society and the authorities, including police forces, is strong. Year on year authorities develop new Action Plans of the Strategy for the improvement of LGBT people's quality of life, in 2017 even explicitly outlining funds designated for each activity. Throughout the year the Ombudsman has treated all reported cases well, and even acted proactively to promote the human rights of LGBTI people. However, the work of activists has not proceeded completely unhindered. The Ministry of Human and Minority Rights, which is responsible for implementation of Action Plans on the human rights of LGBTI people, lacks capacity, which makes strategy implementation, monitoring and evaluation of activities challenging. Furthermore, activities tend to be centered in Podgorica. Research conducted in 2016 reveals that LGBT persons across Montenegro still live in a markedly hostile environment⁵. Hate speech is still prominent, including from some political forces, especially on line. NGO offices, activists and their allies continue to be the victims of verbal and physical attacks. Furthermore, implementation of legislation needs additional work – while hate crime legislation was amended to include grounds of SOGI in 2013, this classification is yet to be used in a case of an attack on an LGBTI person. At least five people have been attacked this year due to their sexual orientation or gender identity. Over 200 cases of online hate speech against LGBTI people have been reported to the police in the reporting period. In negative developments the Supreme Court ruled against the complaint filed in the case of the triple ban of Academic Pride Walk in Niksic back in 2015; NGOs have submitted a Constitutional Complaint in this regard.

In 2018 authorities in Montenegro should focus on:

- *Continued efforts for full and genuine implementation of existing legislative framework that protects the human rights of LGBTI people, with particular focus on implementation outside of the capital city.*
- *Proactive efforts to tackle negative public attitudes of LGBTI people.*
- *Including express mentions of all SOGISC grounds in policies designed to tackle hate speech.*
- *Adopting legal measures to recognise and protect same-sex couples, such as civil unions or registered partnership.*
- *Strategic monitoring and evaluation of the Strategy for the improvement of LGBT people's quality of life and the corresponding action plans.*

Bias motivated violence, hate speech, hate crimes

- From October 2016 until August 2017, NGO LGBT Forum Progress (which has a team devoted solely to monitoring of hate speech) filed 40 individual complaints to the Police Directorate for cases that involved hate speech, discrimination, verbal violence and online abuse of LGBTI people, most around Pride events in December 2016. As of August 2017, eight of those cases have been resolved before the Misdemeanour Court, with the perpetrators fined for a misdemeanour, while another ten are pending resolution.

⁵ The research indicated that public attitudes towards LGBT population in Montenegro are generally negative. For example, approximately 70% of respondents considered homosexuality, bisexuality and being a transgender person to be a disease, and perceive homosexuality as an unnatural phenomenon. Public expressions of a sexuality which differs from a heterosexual one were particularly negatively perceived. 13% of respondents openly claimed that violence against LGBT is acceptable.

- In September 2017, following Montenegro Pride celebrations, NGO LGBT Forum Progress recorded a drastic increase in online hate speech and formed and submitted 203 individual charges/complaints for hate speech, verbal violence and discrimination on the social media. Such a high number of instances of hate speech has not been seen since the first Pride march in Budva in 2013.
- In August 2017, a member of the Governing Board of NGO LGBT Forum Progress got violently attacked at his workplace in Podgorica. He sustained physical injuries that were not life threatening, and he received proper care in the ER. The police immediately apprehended the perpetrators and detained them for questioning. Unfortunately, the attack was qualified as “abusive behaviour”, and the hate-based motivation was not taken into account. The case is pending trial.
- In August 2017 a member of the board of the Montenegro Pride was attacked and serious injuries that required surgery. The perpetrator is yet to be identified.
- In October 2017 a trans woman, an activist from NGO Queer Montenegro, was attacked in Podgorica. The attacker was identified and arrested two weeks after the attack. NGOs are closely monitoring all above mentioned cases.
- According to information available at LGBT Forum Progress, just this year at least five people have been physically attacked due to their sexual orientation or gender identity. None of them have been categorized as hate crimes, but rather as violent behaviour, which is a much lesser charge.
- NGOs Queer Montenegro and Juventas conducted a survey among LGBTI prisoners in Podgorica. The study, which surveyed 175 people, showed that 23% experienced physical violence from other prisoners, 21% experienced psychological violence from other prisoners, and 16% experienced violence from staff, and 17% experiences psychological violence from staff based on their perceived sexual orientation or gender identity. There are no protocols that specifically relate to respect of human rights and treatment of LGBT people in the prison system.

In 2018 Montenegrin authorities should continue to work on full and genuine implementation of existing legislative frameworks, include express mention of all SOGISC grounds in policies designed to tackle hate speech, ensure effective investigation and classification of hate crimes against LGBTI people, and work on sensitisation of prison staff to ensure safety of LGBTI prisoners.

Freedom of assembly, association and expression

- In November 2016, NGO Human Rights Action (HRA), on behalf of NGOs LGBT Forum Progress and Hiperion, filed a constitutional complaint against the verdict of the Supreme court from September of 2016, which confirmed the decision of the Police directorate and the Ministry of Interior to issue three temporary bans of the Academic Pride Walk in Niksic, in 2015. The complaint challenges the legality of this verdict and contests its compliance with the constitution of Montenegro as well as human rights treaties all of which guarantee the right to freedom of assembly. The Constitutional Court has 18 months to issue a ruling in this case.
- The 5th Montenegro Pride march was held successfully in Podgorica on September 23, 2017. Police ensured the safety of participants, which included community members from Podgorica and beyond, as well as international and regional activists. Numbers of police officers present were reduced from previous years, and the route included one of the main streets of Podgorica.

In 2018 Montenegrin authorities should ensure effective access to freedom of assembly not only in Podgorica and other regions of the country.

Equality and non-discrimination, including legislation and enforcement

- In July 2017, the Parliament of Montenegro passed a new Law on the Armed Forces of Montenegro. In this law, for the first time, an article was added (Article 16) that explicitly prohibits discrimination on various grounds, including gender identity and sexual orientation.
- A strong collaboration with police forces has continued throughout the last year, with multiple trainings conducted throughout the country. More training should ensue, to ensure training outside the capital, in prisons etc.
- There is still a great discrepancy between the written legislation, its application and implementation. For example, reforms of the Criminal Code included the addition of Article 42a, which defines hate crimes; but no case of hate crime against an LGBTIQ individual has been brought before the Montenegrin courts in the period between October 2016 and September 2017, or ever before that.

In 2018 Montenegrin authorities should continue effort to ensure full and effective implementation of existing legislative frameworks.

Recognised unions for same sex couples

- NGOs Juventas and Queer Montenegro composed draft registered partnership legislation which was publicly presented at the end of 2016. The subsequent parliamentary procedure has been taking place throughout the year. The Ministry of Human and Minority rights has laid out their plans for the formation of the working group, which includes representatives from NGOs Queer Montenegro, Juventas and LGBT Forum Progress and will work on the text of the Law on the Registered Partnership. It should be adopted in early 2018.

In 2018 Montenegrin authorities should ensure completion of the process for registered partnership for same sex couples.

Rights and equal treatment of trans and intersex persons

- In May 2017, a trans individual was banned, by the clerk of the Ministry of Interior, to change their name into the “name of the opposite sex”. The Law on Personal Name does not specify “male and female” names, and imposes no restrictions in this regard. As such, this case is a clear example of transphobia of the staff members in question; it does not reflect the stance of the Ministry of Interior on the whole, as at least 3 other trans people have successfully changed their names in the past couple of years. This points to a need of further education among staff in public service.
- Association of transgender, intersex and gender variant persons “Spektra” was founded in Podgorica, Montenegro in April.

In 2018 Montenegrin authorities should ensure tidy up legal gender recognition procedures.

Public awareness and attitudes

- The results of ‘Perceptions of the LGBT community’, a study conducted by LGBT NGO Juventas, were published in December. The survey questioned 816 adults in September and was implemented with the support of LGBTIQ NGO Queer Montenegro and the Institute for Legal Studies. Three-quarters of those surveyed said that LGBT people should not have the right to marry and should not be able to adopt. 60% believed that LGBT rights are respected in Montenegro and 13% showed partial or full support for Pride events in the country. A

majority of those surveyed believed that Pride events were organised in order to 'provoke' the majority of the population.

- In March 2017, in the packed hall of KIC Budo Tomovic, a premiere of the first Montenegrin amateur LGBTIQ movie was held. The premiere was organised with the support of KIC Budo Tomovic, and opened by Ms. Maja Bogojevic, a renowned figure on the international movie scene. This movie was the first of its kind in Montenegro, and marked a historical moment for the Montenegrin Queer cultural scene.

In 2018 Montenegrin authorities should take Proactive steps to tackle negative public attitudes of LGBTI people.

3.6. SERBIA

Submitted by: Labris, Gayten LGBT, Da Se Zna, XY Spectrum

Summary of key developments, including political context and trends

The situation in Serbia remains broadly the same as last year, with implementation of exiting legal frameworks a key issue. Levels of hate crime, hate speech continue to be high, and domestic violence is a key issue. Political will to support LGBT human rights is still on a declarative level and used as a “pink-washing” tool, and rhetoric around adoption of a law on registered partnership for same-sex couples is highly negative. Furthermore, implementation of the Action Plan for the National Anti-discrimination Strategy is at a very low level with activities severely behind schedule. Meanwhile, the first openly lesbian government minister, Ana Brnabic, was appointed as prime minister of Serbia, although she has stated that LGBTI issues are not a key concern in Serbia. Same-sex partnerships still haven’t been recognised and legal gender recognition for trans people remains problematic.

Progress in education is slow as only 2 out of 8 textbooks with discriminatory content have been changed, that shows that there is a way but not the will for repealing discriminatory content from high school textbooks. There is a rise of bullying based on sexual orientation and/or gender identity in high schools.

In positive developments, freedom of assembly, association and expression is not an issue anymore. Several large scale LGBTI events took place in Serbia in the reporting period with adequate support of authorities, including Pride march in September, which was attended by the Prime Minister, and Serbia Pride earlier this year.

Main action points for 2018

- *Adoption of a law on same-sex partnerships*
- *Adoption of a law on legal gender recognition*
- *Implementation the National Antidiscrimination Strategy*
- *Proactive work on prevention and protection from bullying based on sexual orientation and/or gender identity in high schools*
- *Proactive efforts to ensure proper and effective implementation of existing legislative frameworks, both in the capital and beyond.*

Bias motivated violence, hate speech, hate crimes

- Although hate crime legislation in Serbia includes grounds of sexual orientation, the implementation of this legislation is lacking. The risk of physical assault and threats against members of the LGBTIQ community, including hate speech, is still high. Domestic violence is of particular concern.
- From August 2016 till September 2017 there were 79 cases of hate crimes and hate speech, and 8 cases of other discrimination that were reported to civil society organisations⁶, only one third was reported to the State.
- Information at the disposal of NGOs shows that the state is still not conducting proper investigation of hate crimes, they are by and large recording hate crime motives but the prosecution is still reluctant to use hate crime as aggravated circumstance in the

⁶ 22 cases of hate crime, 57 cases of hate speech, 8 cases of other discrimination. Source: Da Se Zna NGO which is dedicated to documenting hate crime, hate speech and discrimination of LGBTI people in Serbia.

prosecution. No case of attack on LGBTI community belongings were classified as a case motivated by hate (taken into account hate crime as aggravating circumstance).

Serbia should ensure proper and effective implementation of existing hate crime legislation; including effective investigation and classification of hate crimes against LGBTI people.

Freedom of assembly, association and expression

Several large scale LGBTI events took place in Serbia in the reporting period with adequate cooperation with and support of authorities, including weekly meetings with the police in the period leading up to the Belgrade Pride event:

- The march “Ponos Srbije” with slogan “May all our voices be heard” took place on 24th September with over hundred participants and no major incidents.
- Pride parade “Belgrade Pride” with slogan “For changes” took place on 17th September with over 2000 persons participating. There were no major incidents
- Labris and Local Networks for Prevention of Discrimination and Support to LGBT Persons marked the International Day against Homophobia, Transphobia and Biphobia – IDAHOT in 7 cities in the Republic of Serbia by organizing events on 17th May.

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Equality and non-discrimination, including legislation and enforcement

- Considering that Serbia has fifteen laws that contain within them the anti-discrimination act, it is concerning that this legislative and normative framework has not been adequately used. The anti-discrimination law was adopted in 2009, yet the first sentence based on that law was ruled only in 2017.
- The Action Plan for the National Anti-discrimination Strategy for prevention and protection of Discrimination was adopted in October 2014 and is entering its 4th and final year of operation. Over half of the activities outlined in the Strategy are yet to be implemented.
 - The last report that was publicly presented was the 3rd Report on implementation of the above mention AP covering the period - 1st and 2nd quarter of 2016. It showed that:
 - 5 LGBTI related measures are implemented
 - 2 LGBTI related measures were not implemented
 - For 5 measures there is no data on implementation process
 - According to the action plan the Ministry of Labour was obliged to establish a working group to draft Gender Identity legislation in the last quarter of 2016. Gayten LGBT contacted the ministry to ask whether this was done and received a negative answer in March 2017.

In the coming year Serbian authorities should ensure that existing commitments are met, and the Action Plan National Anti-discrimination Strategy is properly implemented.

Recognised unions for same sex couples

- Same sex couples are still invisible in Serbian legislation. All the initiatives that were supposed to take place as part of the National Anti-discrimination Strategy have been dismissed.
- Serbia adopted the recommendation made by the European Court of Human Rights (ECtHR) in 2015 after the ruling on the case Oliari and Others v Italy, which established a positive obligation upon member states to provide legal recognition for same-sex couples, but no actions have been taken place since then.

In 2018 Serbia should take proactive steps en route to adopting legislation for the recognition of same-sex partnership.

Rights and equal treatment of trans and intersex persons

- Trans people continue to face a situation where there is no clear procedure governing legal gender recognition. In 2013 the NGO Gayten-LGBT proposed a model of Law on Gender Identity, created in accordance with recommendations of the UN, the Yogyakarta principles, and recommendations of the Council of Europe Commissioner for Human Rights. No movement on the draft legislation has taken place despite the fact that the Action Plan for the National Anti-discrimination Strategy for prevention and protection of Discrimination specified the obligation to establish a working group on this in 2016.
- The trans community remains among the most vulnerable in society, with high right of family rejection, homelessness, domestic violence, which is often not reported to the police. Many of these people leave school, and as they are unemployed and without great employment opportunities, they often live on the streets. This is the beginning of the vicious circle of discrimination.
- In Serbia there is still a high level of prejudice and the lack of knowledge regarding intersex people. The *silent practice* of doctors advising parents of intersex babies to perform medically unnecessary surgical and other medical interventions on intersex new-borns and children, to make their body (seemingly) conform to male or female characteristics, is still in place.
- Intersex persons are invisible socially and legally; there is no accurate information about their number, experiences and their quality of life. There is no research that would draw attention of the general public to intersex persons and provide information on this topic.
- Regulations dealing with protection from discrimination do not recognize sexual characteristics as a personal feature of a person which may be the basis for the ban on discrimination.
- Gayten-LGBT received a reply of the Ministry of Health regarding our inquiry which says that there are no written procedures regarding intersex people, although the practice of the Institute for mother and child says that intersex babies are operated on upon birth or later in infancy. The document received from the Institute for mother and child in Belgrade also corroborates this.
- In positive news on October 23,2017 Gayten-LGBT were officially informed by the Ministry of Health that, according to Gayten's proposal sent last year, the Republic Commission for Transgender Disorders was renamed the Republic Commission for Transgender Conditions, marking a significant step toward depathologisation!

In 2018 Serbian authorities should adopt legislation for legal gender recognition, as well as take steps for the protection of the human rights of intersex people.

Public awareness and attitudes

- Media representation of LGBTI topics improves year on year. The media is still the dominant field that can contribute to the visibility of the problems that LGBTI persons face, but it also enhances the level of stereotypes and prejudices, and often intolerance. Texts that offend the dignity of persons of different sexual orientation and gender identity in a disturbing and degrading way are not rare.
- In the context of respecting the law and the Code of Journalists of Serbia, journalists are obliged to distance themselves from discriminatory attitudes towards the people they are talking to, but in practice this is not always the case and the high level of compliant on hate speech to the regulatory bodies and discrimination based on SOGI shows that level of homophobia and transphobia still persist at a worrisome level.

A supportive and enabling environment for civil society

- The level of cooperation of the State and LGBT CSOs is still low and LGBT persons and/or CSOs are not involved in creating of the policies and initiatives that would lead to the improvement of the position of the LGBT persons in Serbia.

Serbian authorities should see civil society organisations as allies and improve collaboration.

3.7. TURKEY

Submitted by: Kaos GL

Summary of key developments, including political context and trends

During the reporting period the situation for human rights, including the human rights of LGBTI people, has significantly worsened in Turkey. A state of emergency continues in the country following the failed coup in the summer of 2016. Emergency powers of the police have been extended, allowing authorities to detain people without charge for up to a month. Hundreds of academics, human rights activists, journalists and opposition politicians have been imprisoned, many on trumped up charges of terrorism, including a high profile case of the arrest and trial of notable Amnesty International human rights defenders who were jailed for over 5 months and still face charges of terrorism following their trial in October 2017⁷. A constitutional referendum was held in Turkey on 16 April 2017 and approved 18 proposed amendments to the Turkish constitution, abolishing the office of the Prime Minister and replacing the existing parliamentary system of government with an executive presidency and a presidential system, and granting president Erdogan significantly more power. Pride marches in big cities were banned again, with brutal crack downs from police forces on people who attempted to march anyway. In November the governor of Ankara issued an indefinite blanket ban on all LGBT events. Hundreds of civil society organisations have been shut down by executive order. While no LGBTI organisations have yet fallen victim to this, they have had to drastically alter their ways of working, especially considering that a majority of their allies (other NGOs, academics, opposition politicians) have been imprisoned. A general atmosphere of fear prevails, affecting not only the functioning of the organisations, but the wellbeing of activists as well as their ability to reach out to and support the broader LGBTI communities.

Priorities for the next year:

Due to the continuously worsening situation this year's report will not suggest any legal or policy recommendations for the Turkish government to consider. Instead we ask that the European Commission:

- *Consider what mechanisms are in place to support human rights defenders, especially LGBTI activists, to ensure they can keep up their crucial work in supporting their communities in an increasingly more challenging context.*
- *Ensure full and effective implementation of the EU's LGBTI guidelines and to work with EU delegations and Member State embassies based in Turkey to ensure effective, support to those fighting the increasing authoritarianism and its effects on a day to day basis.*
- *Ensure that the rapidly deteriorating situation in Turkey, including for LGBTI people, informs and influences the EU's interactions and dealings with the country, and that relevant institutions, including the European Commission, are more outspoken in condemning the regressive tendencies in democratic processes and human rights, and their harmful impact on minority rights, especially LGBTI rights.*

Bias motivated violence, hate speech, hate crimes

To date, no specific legislation or public policy has been introduced in Turkey to protect LGBTI people against hate crimes or hate speech. As most political allies of the LGBTI movement have been imprisoned since the attempted coup, there have been no attempts at introducing any changes. In fact, LGBTI issues have become increasingly more demonised, and even the Parliamentary Human Rights Commission and Turkish Human Rights and Equality Institution have taken no action following instances of hate crime or hate speech targeting LGBTI people.

⁷ <https://www.theguardian.com/world/2017/oct/25/turkish-judge-bails-eight-amnesty-human-rights-activists>

A considerable amount of the hate speech towards LGBTI people originates from pro-government media and pro-government public opinion leaders such as the so-called “Erdoğan’s preacher”, Hayrettin Karaman. Even public authorities are openly homophobic and transphobic. For example, the Minister of Interior called a well-known Turkish columnist, Ertuğrul Özkök of Hürriyet, “to go to Europe and meet with his faggot friends”. In autumn 2017, open hate speech came even from Erdoğan himself⁸. Due to the negative conditions, political and security risks, even NGOs, such as Kaos GL with its traditional expertise on hate speech, have decided to stay out of the occurrence and did not heat the debate.

Cases of brutal hate crimes continue to take place with impunity. As one of the gravest examples, The Ministry of Family and Social Policies has to this day not mentioned a word on the notorious cases of murders of Hande Kader, or Wisam Sankari.

None of the recommendations in last year’s Progress Report were acted upon.

Freedom of assembly, association and expression

In the reporting period the Turkish Government used security concerns or “social sensitivities” to restrict the constitutional right to freedom of expression and assembly and banned Pride events in Istanbul, Izmir, Mersin and elsewhere.

At the end of June for the third year in a row, after over 20 years of successful Pride marches, the Istanbul LGBTI+ Pride March was banned the day before it was due to take place. This year the reasons stated by the local government for the ban were that it “evidently, received very serious reactions from different segments of society” and that “the march that is being organized will not be allowed for the safety of our citizens, participants, and tourists”. LGBTI+ Pride celebrators gathered at Taksim Square in Istanbul and defied the ban in the exercise of their rights. They were met by police in riot gear who fired rubber bullets, teargas, and used brutality against protesters. 28 protesters were detained. The police presence outnumbered the activists. – paradoxical, as this is the same Police force that, according to the local government’s ban, was not able to provide adequate protection to the protesters; a week later Trans Pride was also attacked in Istanbul.

Later in the year German film days were banned, LGBTI rights and media training in Mardin were cancelled due to serious threats that police did not act upon, and, most worryingly, in November, the governor of Ankara issued a blanket, indefinite ban on all LGBT events⁹ (NGOs Kaos GL and Pink Life have contested this ban in court).

Equality and non-discrimination, including legislation and enforcement

There has been no progress in relation with adopting a fully comprehensive dedicated law on combating discrimination in line with the European Charter of Fundamental Rights. There have been no moves to include grounds of sexual orientation in legislation or policies. Unlike in the entirety of the EU and most candidate countries, there are also no protections against discrimination even in the workplace.

On the contrary, the prolonged state of emergency and mass closure of NGOs by means of state of emergency decrees have created a political context that is entirely closed to SOGI related public debates, interventions and initiatives.

Rights and equal treatment of trans and intersex persons

⁸ <http://www.kaosgl.org/page.php?id=24953>

⁹ <http://www.kaosgl.org/page.php?id=24993>

Trans people continue to be among the most vulnerable in society with severe barriers to legal gender recognition, severe risk of discrimination due to colour coded identification documents, and forced sterilisation for any medical procedures. The vast majority of trans people are forced to work as sex workers. However, even this is becoming increasingly more difficult due to further criminalisation of sex work. Police abuse of sex workers is also an issue.

Public awareness and attitudes

Public attitudes remain strongly negative and have likely become even stronger in light of the current context of mounting hate speech and demonization of LGBTI issues.

A supportive and enabling environment for civil society

Hundreds of NGOs have been closed by executive decree. While no LGBTI organisations have been directly affected, this has had a significant impact on their ability to operate. On the one hand the general atmosphere of fear creates a psychological threat on LGBTI organisations, on the other human rights defenders operate in an environment in which they don't know when they may be shut down, making any activities incredibly difficult to plan. Community members are also increasingly more fearful of attending any events or communicating with NGOs. Furthermore, a noteworthy number of the NGOs and media outlets which have been shut down were key allies of LGBTI organisations.

In this environment it is not surprising that no ministries or public institutions consult LGBTI organisations for legislation, policy or practice. This includes the Ministry of Interior which carried out joint hate crimes training with OSCE for Turkish police officials; as such, LGBTI issues were not part of this training.